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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A.F., an infant over the age of 14 years, by his  
natural guardian and mother, ELIZABETH  
FELDMAN; and ELIZABETH FELDMAN,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

**ECF CASE**

14 CIV 374 (VB)

**ANSWER**

Defendant United States of America (the “Government or “Defendant), by and through  
its attorney, Preet Bharara, United States Attorney for the Southern District of New York,  
answers the allegations in the Complaint, upon information and belief, as follows:

1. Paragraph 1 contains legal conclusions to which no response is required.
2. Paragraph 2 contains legal conclusions to which no response is required.
3. Admits the allegations contained in Paragraph 3.
4. Paragraph 4 contains legal conclusions to which no response is required.
5. The first sentence of Paragraph 5 contains legal conclusions to which no response  
is required. Denies the remaining allegations contained in Paragraph 5, excepts admits that Open  
Door is located with the Southern District of New York.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7.

8. Admits the allegations contained in Paragraph 8.

9. Admits the allegations contained in Paragraph 9.

10. Admits the allegations contained in Paragraph 10.

11. Denies knowledge and information sufficient to come to form a belief as to the allegations contained in Paragraph 11, except admits that Onyinye Okpukpara, M.D., was licensed physician in the State of New York and employed by Open Door at the time of the allegations contained in Paragraphs 17-21.

12. Denies the allegations contained in Paragraph 12, except admits that Onyinye Okpukpara, M.D., has possessed the skills described in Paragraph 12.

13. Denies the allegations contained in Paragraph 13, except admits that Onyinye Okpukpara, M.D., has possessed the skills described in Paragraph 13.

14. Admits the allegations contained in Paragraph 14.

15. Denies the allegations contained in Paragraph 15.

16. Denies the allegations contained in Paragraph 16, but admits that Onyinye Okpukpara, M.D., was an employee of Open Door at the time of the allegations contained in Paragraphs 17-21.

17. Admits the allegations contained in Paragraph 17.

18. Admits the allegations contained in Paragraph 18.

19. Denies the allegations contained in Paragraph 19.

- 20. Denies the allegations contained in Paragraph 20.
- 21. Denies the allegations contained in Paragraph 21.
- 22. Defendant incorporates by reference its foregoing responses to the allegations contained in Paragraphs 1-21.
- 23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.
- 24. Denies the allegations contained in Paragraph 24.
- 25. The final unnumbered paragraph beginning with “Wherefore” contains Plaintiffs’ prayer for relief to which no response is required. To the extent a response is required, the allegations are denied.

#### **FIRST DEFENSE**

Defendant, through its employees and agents, acted with due care and diligence at all relevant times and any injuries sustained by Plaintiffs were sustained without any negligence or fault or want of due care by Defendant.

#### **SECOND DEFENSE**

Plaintiffs had knowledge of and voluntarily assumed the risks incident to the matters alleged in the Complaint. The injuries alleged in the Complaint were caused by and arose out of such risks. Plaintiffs accepted a known risk inherent in the treatment A.F. received.

#### **THIRD DEFENSE**

The injuries and damages alleged in the complaint were not proximately caused by any negligent or wrongful act or omission of Defendant, or any agent or employee of Defendant.

**FOURTH DEFENSE**

Any amount of damages recoverable by Plaintiffs must be diminished in proportion to the culpable conduct attributable to Plaintiffs in accordance with § 1411 of the New York Civil Practice Law and Rules (“CPLR”).

**FIFTH DEFENSE**

To the extent the injuries and damages alleged in the complaint were caused in whole or in part by the negligence or other acts of third parties over whom Defendant exercised no control, any recovery must be proportionately reduced.

**SIXTH DEFENSE**

Plaintiffs’ recovery, if any, in this action is limited to the amount stated in Plaintiffs’ administrative claim, pursuant to 28 U.S.C. § 2675.

**SEVENTH DEFENSE**

Plaintiffs’ recovery, if any, must be reduced pursuant to the collateral source statute, CPLR § 4545.

**EIGHTH DEFENSE**

Plaintiffs may not recover costs in excess of those permitted by 28 U.S.C. § 2412, and to the extent attorney’s fees are paid out of the judgment, they may only be paid in accordance with 28 U.S.C. § 2678.

**NINTH DEFENSE**

Plaintiffs is not entitled for pre-judgment interest or punitive or special damages under 28 U.S.C. § 2674.

**TENTH DEFENSE**

Plaintiffs’ claims are barred by the applicable statute of limitations.

**ELEVENTH DEFENSE**

This action is subject to, and limited by, all of the provisions of the Federal Tort Claims Act, including any not specifically identified in this Answer. 28 U.S.C. §§ 1346(b), 1402(b), 2401(b), 2671-80.

Defendant asserts that it may have additional affirmative defenses that are not known to Defendant at this time, but which may be ascertained through discovery. Defendant specifically preserves such affirmative defenses as they are ascertained through discovery.

WHEREFORE, Defendant respectfully requests that this Court enter judgment dismissing the Complaint in its entirety, and such other relief as the Court deems proper.

Dated: New York, New York  
May 21, 2014

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